Alexander ak Vincent v Aden ak Denong @ Gabriel Adit ak Demong

HIGH COURT (SIBU) — ELECTION PETITION NO 26–01 OF 2006
SANGAU GUNTING J
25 SEPTEMBER 2006

Election — Petition — Allegation of corrupt practice — Material facts relating to corrupt practices of petitioner not stated in petition — Whether petition should be struck out — Election Offences Act 1954 ss 8, 9,10(a), (c) & (e) — Election Petition Rules 1954 r 4(1)(b)

In the Sarawak State Election for the constituency of N43 Ngemah held on 20 May 2006, Adeh ak Denong @ Gabriel Adit ak Demong, Alexander ak Vincent and Richard ak Alias were the candidates. Adeh ak Denong ('the respondent') was declared as winner. On 10 July 2006, Alexander ak Vincent ('the petitioner') filed a petition that it might be determined and declared that the respondent was not duly elected and that the election was void and/or that the petitioner was duly elected. The petitioner alleged the respondent 'personally and/or by his agent' committed 14 corrupt practices related to alleged contravention of ss 8, 9,10(a), (c), and (e) of the Election Offences Act 1954. The issue was whether the petition had complied with the mandatory requirements of r 4(1)(b), and (4) of the Election Petition Rules 1954 and the relevant provisions of the Election Offences Act 1954. The respondent's counsel submitted that each of the charges or allegations in the petition was vexatious, frivolous and not disclosing a cause of action it was required for mandatory compliance of r 4(1)(b) of the Election Petition Rules 1954 read with s 32(a), (b) and (c) of the Election Offences Act 1954. Such non-compliance was of fundamental and serious defect to the core of the petition. It was alleged that at the heart of the petition the petitioner merely pleaded a bare statement alleging that the offences were committed by the respondent 'personally and/or by his agent' or someone else and/or the respondent by his agent or agents contrary to the relevant provisions of the Election Offences Act 1954. The respondent further submitted that a bare statement as to the allegation of offences was not a concise fact within the meaning of r 4(1)(b). The respondent's counsel also submitted that the allegation of corrupt practice or other election offences under the Election Offences Act 1954 like fraud cases must be specifically pleaded and proven, but there was no pleading showing the grounds of corrupt practice or alleged offences in the shape of concise material facts for each of these charges in the petition. The respondent's counsel pointed out that 'the pleadings for each of the charges in the petition was nothing more than citation of statutory provisions and then jump to conclusions that the alleged offences were committed by the respondent 'personally and/or by his agent, committed a corrupt practice in connection with the said election'. Therefore the respondent prayed that the petition be struck out with costs.

Held, dismissing the petition with costs:

(1) The specimen in Form 7 of *Atkin's Encyclopedia of Court Forms 1996*, seems to disclose a significant difference when compared to the pleadings in the instant petition. The form shows, that the grounds including the facts and the 'particulars of the acts' are immediately and directly incorporated and correlated in such a manner as being indicative of the intention to portray more clearly the charge leveled against the respondent. The formulation of the grounds and 'the particulars of the acts' are not separated in such a manner as in the instant case as being capable of proliferating or fragmenting or at any rate altering the scope of the allegation, ie the grounds vis-a-vis the 'particulars' (see para 24).

(2) In allegations of the nature as in the instant case — rather than isolating and reserving them to be described as 'particulars', all material facts relied on by a petitioner should have been stated and incorporated into the main allegation or charge so as to portray as concisely as possible the basic framework of the offence concerning which the respondent is alleged to have committed. Such a manner of formulation would have probably helped in narrowing down the issues which the petitioner expected the respondent to answer. In other words, the charge or allegation itself must contain the concise material facts relied on to disclose a complete cause of action, instead of just alleging the respondent 'personally and/or by his agent' had committed an offence, and thereafter referred to the legal provisions purportedly infringed (see paras 70–71).

(3) Even if perhaps it is immaterial how the pleading or charge or allegation is framed as long as, considered in its entirety, it concisely raises all the material facts and the legal provisions relied on in such a manner as being capable of sufficiently and unambiguously portraying to the respondent the nature and scope of the charge or allegation he has to meet, ie disclosing a complete cause of action, the court was still of the view that the manner the charge or allegation or pleading was framed followed by the 'particulars', were incapable of presenting 'as full a picture as of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet' (see para 87).

(4) The petition had not complied with the strict requirements of the relevant provisions of the Election Offences Act 1954 and the Election Petition Rules 1954 — which requirements encompass substantially, inter alia, the manner of formulation as per Form 7 of *Atkin's Encyclopedia of Court Forms*. Here, in formulating 'the concise facts and grounds on which the petitioners rely', it would appear the petitioner did not adopt the approach whereby all material facts were immediately and directly correlated to the grounds, so as to paint a wholesome picture to enable the respondent to sufficiently meet each of the charges leveled against him. If the manner of formulation of the facts and grounds was such that it raised serious ambiguities due to non-compliance with r 4(1)(b) of the Election Petition Rules 1954, as would appear to be the case as regards the instant petition, then the petition would have to be struck out. While there was merit in the petitioner's 'ostrich burying its head in the sand' argument, not much force could be derived from such an argument unless a reading of the pleadings including the purported facts, albeit set out

separately and specifically under the heading 'particulars', could portray a correlated statement of the facts and grounds so as to disclose a cause of action (see para 99).

[Bahasa Malaysia summary

Dalam pilihanraya Negeri Sarawak, untuk kawasan pengundian N43, yang diadakan pada 20 Mei 2006, calon-calonnya adalah Adeh ak Denong @ Gabriel Adit ak Demong, Alexander ak Vincent dan Richard ak Alias. Adeh ak Denong (responden) telah diisytiharkan sebagai pemenang. Pada 10 Julai 2006, Alexander ak Vincent (pempetisyen) telah menfailkan satu petisyen untuk menentukan dan mengisytiharkan responden adalah tidak terpilih dan pilihanraya tersebut adalah tidak sah dan/atau pempetisyen adalah yang dipilih. Pempetisyen mendakwa, responden ' secara bersendirian dan/atau melalui agennya' telah melakukan 14 amalan korup yang berkaitan kepada yang dikatakan menyalahi ss 8, 9,10(a), (c), dan (e) of the Akta Kesalahan Pilihanraya 1954. Isu sama ada petisyen telah memenuhi keperluan mandatori di bawah k 4(1)(b), dan (4) Kaedah-Kaedah Petisyen Pilihanraya 1954 dan peruntukan-peruntukan yang berkaitan Akta Kesalahan Pilihanraya 1954. Peguamcara responden menghujahkan bahawa setiap pertuduhan dan dakwaan di dalam petisyen adalah remeh, menyusahkan dan tidak memperlihatkan kausa tindakan sebagaimana yang diperlukan untuk keperluan mandatori k 4(1)(b) Kaedah-Kaedah Petisyen Pilihanraya 1954 yang dibaca bersama dengan s 32(a), (b) dan (c) Akta Kesalahan Pilihanraya 1954. Ketidakpatuhan adalah kecacatan dasar dan serius kepada teras petisyen. Adalah diperkatakan bahawa intipati petisyen pempetisyen hanyalah memplidkan pernyataan kosong yang mendakwa bahawa kesalahan-kesalahan yang dilakukan oleh responden secara berseorangan dan/atau melalui ejennya atau seseorang yang lain dan/atau responden melalui ejennya atau ejen-ejennya bertentangan dengan peruntukan-peruntukan Akta Kesalahan Pilihanraya 1954. Responden selanjutnya menghujahkan bahawa pernyataan kosong terhadap dakwaan kesalahan-kesalahan bukanlah fakta yang ringkas lagi padat di dalam lingkungan makna k 4(1)(b). Peguamcara responden juga menghujahkan bahawa dakwaan amalan korup atau kesalahan pilihanraya yang lain di bawah Akta Kesalahan Pilihanraya 1954 seperti kes-kes penipuan mestilah diplidkan secara spesifik dan dibuktikan, tetapi tidak terdapat di dalam pliding yang menunjukkan asas kepada amalan korup atau kesalahan-kesalahan yang didakwa di dalam bentuk fakta material yang ringkas lagi padat untuk setiap pertuduhan, di dalam petisyen hanyalah petikan peruntukan-peruntukan berkanun dan terus kepada kesimpulan yang mana kesalahan-kesalahan yang didakwa dilakukan oleh responden secara berseorangan dan/atau melalui ejennya yang melakukan amalan korup yang bersangkutan dengan pilihanraya tersebut. Oleh yang demikian, responden memohon agar petisyen ditolak dengan kos.

Diputuskan, menolak petisyen dengan kos:

(1) Contoh dalam Borang 7 *Atkin's Encyclopedia of Court Forms 1996*, memperlihatkan perbezaan yang penting ketika membandingkan pliding-pliding di dalam petisyen ini. Borang tersebut menunjukkan bahawa alasan-alasan termasuklah fakta dan 'butiran-butiran perlakuan' adalah secara

terus dan langsung digabungkan dan berhubung kait, secara sedemikian menunjukkan niat bagi menggambarkan dengan lebih jelas dakwaan yang tepat terhadap responden. Rumusan kepada alasan-alasan dan butiran-butiran perlakuan adalah tidak terpisah secara sedemikian seperti mana dalam kes ini yang mana boleh dikembangkan atau dipecah-pecahkan atau di mana-mana kadar pindaan skop dakwaan, sebagai contoh alasan-alasan yang berhubung dengan butiran-butiran (lihat perenggan 24).

(2) Di dalam keadaan dakwaan seperti mana dalam kes ini — daripada mengasingkan dan menyimpannya untuk menggambarkan sebagai butiran-butiran, kesemua fakta yang material diharapkan oleh pempetisyen seharusnya menyatakan dan digabungkan ke dalam dakwaan utama atau pertuduhan bagi gambaran lebih ringkas dan padat yang boleh dalam asas kerangka kesalahan-kelasahan yang berkenaan seperti mana responden didakwa melakukannya. Rumusan sedemikian berkemungkinan membantu dalam mengecilkan isu-isu seperti yang diinginkan oleh pempetisyen bagi responden untuk menjawab. Dalam erti kata lain, pertuduhan dan dakwaan tersebut mestilah mengandungi fakta material yang ringkas dan padat yang diharapkan untuk menggambarkan kausa tindakan yang lengkap, daripada hanya membuat dakwaan terhadap responden secara berseorangan dan/atau melalui ejennya telah melakukan kesalahan dan seterusnya merujuk kepada peruntukan undang-undang yang dimaksudkan telah dicabuli (lihat perenggan 70–71).

(3) Walaupun jika berkemungkinan ianya tidak penting bagaimana pliding atau pertuduhan atau dakwaan dirangkakan yang pentingnya pertimbangan secara keseluruhannya, ianya dibangkitkan secara ringkas dan padat kesemua fakta-fakta material dan peruntukan undang-undang yang diharapkan, secara sedemikian adalah mampu secukupnya dan tanpa kesamaran menggambarkan kepada responden keadaan dan skop pertuduhan atau dakwaan yang beliau perlu hadapi, seperti menyatakan kausa tindakan yang lengkap, mahkamah masih berpendapat bahawa cara pertuduhan atau dakwaan atau pliding dirangka diikuti dengan butiran-butiran, adalah tidak berkemampuan untuk menyampaikan sepertimana gambaran penuh kausa tindakan bersama-sama dengan maklumat lanjut yang teliti untuk membuat pihak berlawanan memahami kes yang dihadapi (lihat perenggan 87).

(4) Petisyen adalah tidak memenuhi kehendak dengan syarat-syarat ketat di bawah peruntukan yang berkaitan iaitu Akta Kesalahan Pilihanraya 1954 dan Kaedah-Kaedah Petisyen Pilihanraya 1954 — yang mana syarat-syarat sebahagian besarnya merangkumi, antara lain, cara perumusan seperti Borang 7 *Atkin's Encyclopedia of Court Forms*. Di sini, dalam merumuskan alasan dan fakta yang ringkas lagi padat di atas apa yang diharapkan oleh pempetisyen, ianya berkemungkinan timbul, pempetisyen tidak mengambil dan mengamalkan pendekatan yang mana kesemua fakta material adalah secara terus dan langsung berhubung kait dengan alasan-alasan, oleh yang demikian untuk menunjukkan keseluruhan gambaran bagi membolehkan responden secara lengkap menghadapi pertuduhan yang tepat ke atasnya. Jika cara perumusan fakta-fakta dan alasan-alasan sedemikian membangkitkan kesamaran yang serius disebabkan kepada ketidakpatuhan dengan k 4(1)(b)

Kaedah-Kaedah Petisyen Pilihanraya 1954, seperti mana yang kelihatan berkenaan dengan kes ini, selanjutnya petisyen ini seharusnya ditolak. Sementara terdapatnya merit di dalam pernyataan pempetisyen yang seperti 'burung unta menanam kepalanya di dalam tanah'. Tidak banyak kekuatan yang boleh diperolehi daripada pernyataan tersebut melainkan membaca pliding termasuk maksud fakta, sungguhpun dibuat berasingan dan secara spesifik di bawah tajuk butiran-butiran, boleh menunjukkan pernyataan fakta dan alasan yang berhubung kait selagi mana untuk menyatakan kausa tindakan (lihat perenggan 99).]

Notes

For cases on election petition, allegation of corrupt practice, see 6 *Mallal's Digest* (4th Ed, 2004 Reissue) paras 1890–1896.

Cases referred to

Azhar Hussain v Rajiv Gandhi AIR 1986 SC 1253 (refd)
Beal v Smith [1869] LR4 CP 145 (refd)
Charan lal Sahu v Giani Zail Singh & Anor [1983] MLB (Ind) 24 (refd)
Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N26 Bangi —Mohd Zakri bin Hj Hussin & Ors and other petitions (No 2) [2005] 2 MLJ 149 (refd)
Gurdial Singh Nijar v KS Balakrishnan [1993] 2 CLJ 75 (refd)
Lee Kuan Yew v Devan Nair [1990] 3 MLJ 452 (refd)
Mahendra Pal v Ram Dass Malanger & Ors AIR 2000 SC 16 (refd)
Patau Rubis @ Dr Patau Rubis v Patrick Anak Uren & Anor [1984] 1 CLJ 51 (refd)
Rahim Khan v Khurshid Ahmed & Ors [1974] MLB (Ind) 138 (refd)
Roop Lai Sathi v Nachhattar Singh AIR 1982 SC 1559 (refd)
Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors [2005] 1 MLJ 345 (refd)
SN Balakrishna v Fernandez AIR 1969 SC 1201 (refd)
Sardar Harcharan Singh Brar v Sukh Darshan Singh & Ors [2004] INSC 713 (refd)
Shri Udhav Singh v Madhav Rao Scindia AIR 1976 SC 744 (refd)
Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor Daud bin Jusoh v Annuar bin Haji Musa & Anor; Mohd Nor bin Ismail v Mohd Zain bin Abdullah & Anor [1988] 2 MLJ 384 (refd)
Ziyauddin Burhanuddin Bukhari v Brijmohan Ramdass Mehra & Ors AIR 1975 SC 1778 (refd)

Legislation referred to

Election Offences Act 1954 ss 8, 9,10(a), (c), (e), 24b(1), (3), 26(1)(a), (f), 32(a), (b), (c)
Election Petition Rules 1954 rr 4(1)(a), (b), (2), (3), (4), 5
Representation of the People Act 1949 [UK]
Representation of the People Act 1951 [India] s 83
Representation of the People Act 1983 [UK]

Sim Hui Chuang (Lim Lip Sze with him) (Reddi & Co) for the petitioner.
Henry Ling Kuong Meng (Frankie Tieh Kah Siang with him) (Ling & Wong) for the respondent.

Sangau Gunting J:

[1] In the Sarawak State Election for the constituency of N43 Ngemah held on 20 May 2006, Adeh ak Denong @ Gabriel Adit ak Demong, Alexander ak Vincent and Richard ak Alias were the candidates. Adeh ak Demong was declared as winner.

[2] On 10 July 2006, Alexander ak Vincent ('the petitioner') through his advocate Mr Sim Hui Chuang of Messrs Reddi & Co, Kuching, Sarawak filed a Notice of Presentation of Election Petition. The petition dated 10 July 2006 (encl 6) prays, that *it might be determined and declared that the said Adeh ak Demong @ Gabriel Adit ak Demong (the respondent) was not duly elected or returned, and that the election was void and/or that your petitioner, Alexander ak Vincent, was duly elected and ought to have been returned*.

[3] The petitioner alleges the respondent 'personally and/or by his agent' committed fourteen corrupt practices related to alleged contravention of ss 8, 9, 10(a), (c), and (e) of the Election Offences Act 1954. It would appear, that there are further allegations of 'general bribery, general treating and/or general intimidation', and of non-compliance with or infringement of ss 8, 9, 10(c) & (e), 24b(1) & (3), 26(1)(a) and/or (1)(f) of the Election Offences Act 1954. Under each of all the 16 allegations or charges leveled against the respondent, the petitioner provides what he purports to be the 'particulars' thereof.

[4] Concerning the petitioner's allegation of alleged commission of corrupt practices under subparas (3)(i) to (3)(xiv) of the petition, the petitioner's prayer that *the election of (the respondent) ought... be declared void* is made under s 32(c) of the Election Offences Act 1954. Concerning allegations under subparas (3)(xv) and (3)(xvi), the said prayer is made respectively under ss 32(a) and (b) of the Election Offences Act 1954. For brevity all the allegations raised in the petition would intermittently be referred to as allegations or charges (3)(i) to (3)(xvi).

NOTICE OF MOTION

[5] On 3 August 2006, the respondent through his advocate Mr Henry KM Ling of Ling & Wong Advocates and Solicitors Bintulu Sarawak filed a notice of motion (NOM) (encl 24), together with affidavits in support Nos 1 and 2 both affirmed on 3 August 2006. In reply, the petitioner filed an affidavit affirmed on 23 August 2006. At the commencement of the proceeding on 28 August 2006, upon the confirmation by the respondent's counsel that the NOM raises purely legal issues, both parties agreed to simultaneously withdraw their respective affidavits pertaining to the NOM, and the said affidavits were accordingly struck out. Thereafter, the hearing of the NOM proceeded.

[6] After hearing submissions of both counsels for the petitioner and respondent, the court fixed 6 September 2006 for the delivery of its ruling on the NOM. In the meantime, however, for specified reasons there were requests from both parties to reschedule the date for the delivery of the ruling. Subsequently, both parties also

wrote to the court giving further statements relating mainly to the question of the applicability or otherwise of *Beal v Smith* [1869] LR4 CP 145, a case heavily relied upon by the learned counsel for the petitioner during the hearing of the NOM. Copies of English authorities and legislation were supplied by both parties. The case was thereafter rescheduled to 13 September 2006.

[7] In the morning on 13 September 2006, I called the respective advocates of both parties to my chambers and discussed with them the need for clarification of certain matters arising from the arguments of the parties concerning *Beal v Smith* and the related English legislations. As there were three other cases scheduled before me that morning, the leading counsels of both parties could only make the relevant further submissions in the afternoon. At the conclusion of the submissions, the case was briefly stood down. Thereafter, I delivered my ruling dismissing the petition with costs. It was indicated to the parties that the grounds of decision would later be given, and I would now do so.

POWER EXERCISABLE BY AN ELECTION COURT

[8] It would appear relevant to firstly examine the nature of an election court's jurisdiction. As was said by VT Singham J in *Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi —Mohd Zakri Bin Hj Hussin & Ors and other petitions (No 2)* [2005] 2 MLJ 149, an election judge in exercising this peculiar jurisdiction has the inherent power to dismiss or strike out petitions which are defective. Citing *Wan Daud bin Wan Jusoh v Mohamed bin Haji Ali & Anor Daud bin Jusoh v Annuar bin Haji Musa & Anor; Mohd Nor bin Ismail v Mohd Zain bin Abdullah & Anor* [1988] 2 MLJ 384 and *Patau Rubis @ Dr Patau Rubis v Patrick Anak Uren & Anor* [1984] 1 CLJ 51, the learned judge also said:

> I am of the view that where it is viewed contemporaneously in the context of the other provisions of the (Election Offences) Act and r 4 of the Election Petition Rules 1954 confirms not only the intention of the legislature to expedite the early determination of election petition but also to prevent any injustice on the defending candidates, whose election is being challenged, against unspecific and unforeseen allegations from irresponsible challengers. Likewise it is also the object of the election law to equip successful candidates with early notice of the objection and allegation against them so that they might marshal their facts and preserve his evidence in anticipation of the judicial hearing. Consequently, the courts have clearly and consistently ruled that the statutory requirements in r 4(1)(b) of the Election Petition Rules 1954 is mandatory. I find that the rule enacts in peremptory language that the petition shall state the facts and grounds relied on to sustain the prayer. The word 'shall' has been used four times in it. This requirement is further repeated under paragraph. Three of the specimen from shown in sub-r (4). Although this rule is not couched in similar terms as s 83 of the Indian Representation of the People Act 1951... I am however of the view that the true purport and effect of it is similar to that Indian Act 1951.

[9] VT Singham J in *Dr Shafie Abu Bakar v Pegawai Pengurus Pilihanraya N26 Bangi & Ors and other petitions* further said that, '(T)he facts and grounds to be stated in the petition... must comply with the specific requirements of s 32 of the Election Offences Act 1954... The requirements of s 32... thus is of paramount importance and must be adhered to strictly and failure to comply with it will render the petition

defective, and that r 4 of the Election Petition Rules 1954 merely provides for the general mandatory requirements of pleadings of an election petition'.

CORE ISSUE RAISED BY THE NOTICE OF MOTION CONSIDERED IN THE CONTEXT OF PETITIONER'S RELIANCE ON BEAL v SMITH

[10] The central issue arising from the NOM in the instant case would appear to be, whether the petition has complied with the mandatory requirements of r 4(1)(b), and (4) (particularly para (3) of the form provided under that rule) of the Election Petition Rules 1954 and the relevant provisions of the Election Offences Act 1954.

[11] Learned counsel for respondent presented a rather copious written submission, which was subsequently followed by further written and oral submissions. In contrast, the submissions — both written and oral — of learned counsel for the petitioner were brief. Perhaps, this is mainly because in his reply to the submissions of counsel for the respondents, he relied heavily on the view that the legal principles enunciated in *Beal v Smith* are applicable, and also on his contention to the effect, that Indian authorities are not relevant, presumably in dealing with the instant petition.

[12] Primarily in the context of the afore-mentioned views, the learned counsel for the petitioner maintained, that the manner the petition was formulated has complied with the relevant Malaysian statutory provisions. At the heart of counsel's argument seems to be his firm stand, that the relevant provisions of the *General Rules for Michaelmas Terms 1868* (presumably made pursuant to the Parliamentary Elections Act 1868) referred to in *Beal v Smith* (also reported in the Law Times Reports Vol XIX, NS 565, 16 January 1869), are in pari materia with the corresponding provisions of the Malaysia Election Petition Rules 1954, and hence the applicability of *Beal v Smith*.

[13] There seems little doubt that relevant provisions of the English legislation in force in 1869 (*Michaelmas Terms 1868*) referred to in *Beal v Smith*, ie its rr II(1) & (2), Rule III, Rule IV and Rule V are in pari materia with the corresponding Malaysian provisions of the Election Petition Rules 1954, ie respectively, rr 4(1)(a) & (b), (2), (3) and (4) (except for the word 'concise' in para 3 of the specimen form under r 4(4). But for reasons which would hereinafter be discussed, and with respect, in my view the applicability of *Beal v Smith* has substantially been watered down.

[14] In the first place, it could work both ways the submission of learned counsel for the petitioner, that even *Halsbury's Laws of England* (2nd Ed, 1934) Vol XII, p 392, *Halsbury's Laws of England* (4th Ed, 1990) Vol 15 pp 568 and 754 and *Atkin's Encyclopedia of Court Forms* (2nd Ed, 1996) Vol 18, pp 167–168, still cited *Beal v Smith* despite presumably of the existence of particularly the English Election Petition Rules 1960, the wording of its r 4(1)(d) of which is similar, but not in pari materia with para 3 of the form under r 4(4) of the Malaysia Election Petition Rules 1954. By this, I mean that the existence of legislations such as the Election Petition Rules 1960 at the time of the said legal sources citing *Beal v Smith* could also cast doubt as to, at least, the extent of the applicability of *Beal v Smith* decided in 1869

although cited by the 1990 and 1996 edition of *Halsbury's Laws of England* (4th Ed) and *Atkin's Encyclopedia of Court Forms* (2nd Ed) Vol.18, respectively.

[15] In other words, a legal source which cites relevant election legislations then in force, and at the same time comprehensively considers the applicability or otherwise of corresponding past legislation such as the said *Michaelmas Terms* 1863, making the necessary distinction if any, would have been clearer and hence more reassuringly persuasive. It is to be noted for instance, that besides referring to the Election Petition Rules 1960, *Atkin's Encyclopedia of Court Forms* (2nd Ed) also refers to the Representation of the People Act 1983. Assuming these two legislations were in force in England at the time *Atkin's Encyclopedia of Court Forms* and *Halsbury's Laws of England* made reference to *Beal v Smith*, then was there any consideration given to the wordings of, for instance, the provisions in the Election Petition Rules 1960, and the Representation of the People Act 1983 which presumably correspond to the relevant provisions in the said *Michaelmas Terms* 1868? There is no clarification to this question.

Rule 4(1) of the Election Petition Rules 1960 states

> A petition shall be in the form set out in the schedule to these rules or a form to the like effect with such variations as the circumstances may require, and shall state... (d) the grounds on which the relief is sought, setting out *with sufficient particularity* the facts relied on but not the evidence by which they are to be proved. (Emphasis added.)

Paragraph 3 of the form set out in the schedule says:

> That (state the facts on which the petitioner(s) rely)

Rule 4(1)(b) of the Election Petition Rules 1954 states:

> (4) Contents and form of election petition.
>
> (1) An election petition shall contain the following statements;
>
> (b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relide on to sustain the prayer.

The said Paragraph (3) of the form of election petition set out under r 4(4) of the Election Petition Rules 1954 provides:

> And your petitioners say that (here state the *concise* facts and grounds on which the petitioners rely). (Emphasis added.)

[16] According to the respondent's counsel, the insertion of the word 'concise' (vide s 33 of the Election Offences (Amendment) Act 2002 (Act 1177)) 'brings the rule closer to s 83(1)(a) of the Indian Representative of People Act 1951'.

[17] Anyway, except for the word 'concise' in paragraph (3) of the form under r 4(4) of the Election Petition Rules 1954, the wordings of the corresponding provisions in both the Election Petition Rules 1954 and the *Michaelmas Terms* 1868, are as earlier mentioned, in pari materia. But then the wordings of r 1(d) of Election petition Rule 1960 although similar are not in pari materia with the corresponding

rule under the *Michaelmas Terms* 1968 which is in pari materia with the Malaysia r 4(1)(b). Paragraph 3 of the form set out in the schedule to the Election Petition Rules 1960 contemplates of 'facts', the corresponding paragraphs under the relevant forms provided by Election Petition Rules 1954 and the *Michaelmas Terms* 1868 respectively contemplates of *concise facts and grounds* and *facts and grounds*. (Emphasis added.) It would be noted the differences: 'facts', 'facts and grounds' and 'concise facts and grounds'.

[18] Learned counsel for the petitioner during presentation of his submission kept insisting on the usage of just the word 'facts' instead of 'material facts'. That seems more in tune with the usage of just the word 'facts' contemplated by the form under the English Election Petition Rules 1960 and to some extent just the word 'facts' in 'facts and grounds' contemplated by the form provided under *Michaelmas Terms* 1968. In this context, is not the usage of words 'concise facts and grounds' stated in para 3 of the form under r 4(4) of the Election Petition Rules 1954 more in tune with the usage of the words 'material facts' rather than just plain 'facts'? In my view, in relative terms the answer would quite clearly appear to be in the positive.

[19] Anyway, even if the purported applicability of *Beal v Smith* is limited to the proposition that the allegation that 'the member petitioned against had been guilty of bribery...' could be stated generally in an election petition, there is still the submission, that the election offences legislation in England at the time *Beal v Smith* was decided and even later, could be worded differently from the provisions relating to the corresponding type of offences under our Election Offences Act 1954. As indicated in *Atkin's Encylopedia of Court Forms* (2nd Ed) p 163, the corresponding legislation in England (at any rate in 1996) would appear to be the Representation of the People Act 1983. And it seems prior to that there was the Representation of the People Act 1949. It has not been shown to be also in pari materia, the provisions relating to the various corresponding offences in both the Election Offences Act 1954 and the Representation of the People Act 1949 or Representation of the People Act 1983.

[20] It is to be recalled at this juncture, what was said by the learned judge in *Dr Shafie Abu Bakar v Pegawai Pengurus Pilihanraya N26 Bangi & Ors and other petitions*: '(t)he facts and grounds to be stated in the petition... must comply with the specific requirements of s 32 of the Election Offences Act 1954... The requirements of s 32... thus is of paramount importance and must be adhered to strictly and failure to comply with it will render the petition defective', and that r 4 of the Election Petition Rules 1954 'merely provides for the general mandatory requirements of pleadings of an election petition'.

[21] It would appear therefore that in formulating the pleadings in an election petition in Malaysia, the mandatory requirements of the relevant provisions of not only the Election Petition Rules 1954 but also the relevant provisions of the Election Offences Act 1954 must be complied with. Hence, in the context of the argument of the learned counsel for the petitioner, it would appear in any case inadequate to show as being in pari materia merely the relevant corresponding provisions of the Election Petition Rules 1954 and the *Michaelmas Terms* 1968 without, at the same

time, also taking into account the relevant provisions of the Election Offences Act 1954 and its counterpart in England at the time *Beal v Smith* was decided.

[22] Furthermore, there are the differences in the manner of formulating between the form of petition in the instant petition and the manner of formulation of not only the specimen forms (Forms 5 and 7) in *Atkin's Encyclopedia of Court Forms* (2nd Ed) pp 225 and 227, but also the manner of formulation of the actual form of the petition dealt with in *Beal v Smith* In this connection, it must be noted that the learned counsel for the petitioner himself has referred to the said Forms 5 and 7 of *Atkin's Encyclopedia of Court Forms*.

[23] Learned counsel for the petitioner quotes a portion of para 8 of *Atkin's Encyclopedia of Court Forms* 1996 issue at pp 167–168:

> The petition must be in the prescribed form (... see Forms 5–7 post) and state the petitioner's right to petition and the holding and result of the election, and *briefly, the facts and grounds relied on to sustain* the prayer ((Election Petition Rules 1960 r 4(1)) (as amended)). Evidence need not be stated in it. It is *sufficient for the petitioner to allege the grounds generally, and a petition alleging that the respondent and his agents are charged with bribery, corruption and undue influence and also with illegal practices would be in form sufficient* (*Beal v Smith* (1869) LR 4 Creditor's Petition 145). A general allegation may not be construed so as to include acts not committed until after the presentation of the petition... (Emphasis added.)

[24] Learned counsel for the petitioner goes on to say: 'A perusal of Form 5 and Form 7 would show the generality with which the facts and grounds are briefly stated. In Form 7, the precedent for pleading of corrupt practices is as follows (counsel then quotes Form 7 (para 1) on p 227 of *Atkin's Encyclopedia of Court Forms* 1996). Para 1 of the said Form 7 says:

> That the said JK was (personally or by his agent) guilty of the corrupt practices of (... bribery... or as the case may be) before, during and/or after the said election contrary to the provisions of Section... of the Representation of the People Act 1983 (give particulars of the acts alleged to constitute practices, eg...' in that the said JK aided, abetted, counseled or procured certain persons, namely PO and RS.... to personate and vote at the said elections as and for certain other persons, namely QQ and SS, whose names appeared on the register of electors for the said (constituency) but who (were fictitious persons or were dead or did not themselves vote) and that the said votes so recorded are void and ought now to be struck off the poll or as the case may be).

[25] The formulation of the petition dealt with in *Beal v Smith* is as follows:

> In the Common Pleas.
>
> The Parliamentary Elections Act 1868 Election for the
>
> city of Westminster, holden on the 16th and 17th days of
>
> Nov. AD 1868. The Petition of James Beal, of 209,

Piccadilly, in the

County of Middlesex, land agent: Jonathan Thomas

Carr, of 15, Warwick-street, Regent-street, in the same

County, warehouseman; and Thomas Richardson, of 36

Little Pulteney-street, in the same county, tailor,

Whose names are subscribed.

(1) Your petitioners are persons who voted at the above election.

(2) And your petitioners state that the election was holden on the 16th and 17th Nov AD 1868, when the Hon Richard Wellestey Grosvenor, John Stuart Mill, Esq, and William Henry Smith, Esg, were candidates; and the returning officer has returned the Hon Richard Wellesley Grosvenor and William Henry Smith, Esq, as being duly elected.

(3) And your petitioners say that the said William Henry Smith was by himself and other persons on his behalf guilty of bribery, treating, and undue influence, before, during and after the said election, whereby he was and is incapacitated for serving in parliament for the said city of Westminster, and the said election and the said return of the said William Henry Smith were and are wholly null and void.

Wherefore your petitioners pray that it may b e determined that the said

William Henry Smith was not duly elected or returned, and that

his election and return were and are wholly null and void.

JAMES BEAL.

JONATHAN THOMAS CARR.

THOMAS RICHARDSON.

[26] In contrast, if the 'particulars' in each allegation are taken into account, the formulation of each of the allegations in the instant petition is considerably more detailed. Ironically, concerning each of all the sixteen allegations in the petition the respondent complains, inter alia, '(the petition) failed to plead the concise statement of material facts on which the petitioner relies and grounds to sustain the prayer'. This seems to be the respondent's basis for contending that the petition fails to comply with the mandatory provisions of r 4(1)(b) of the Election Petition Rules 1954.

[27] For comparison, sub-para (3)(i) of the petition is reproduced as follows:

(3) And your petitioner say:

(i) That the said *Aden ak Denong @ Gabriel Adit ak Demong*, personally and/or by his agent, committed a corrupt practice in connection with the said election by committing the offence of bribery, contrary to the provision of s 10(a) of the Election Offences Act 1954, and the election of the said *Aden ak Denong @ Gabriel Adit ak Demong* ought therefore, be declared void under s 32(c) of the Election Offences Act 1954:

Particulars

The said *Aden ak Denong @ Gabriel Adit ak Demong*, at Rumah Intai, Nanga Tada, on 20 May 2006,or before, during and/or after the said election, directly or indirectly, personally and/or by his agent(s) or other person (s) on his behalf, gave or offer money or valuable consideration:

(a) to or for electors or voters (including one Cheria Anak Melina) in Rumah Intai, Nanga Tada; and/or

(b) to or for any person (including one Silas Anak Jepai and/or one Geraji Anak Lipa) on behalf of electors or voters in Rumah Intai, Nanga Tada; and/or

(c) to or for any other persons (including one Silas anak Jepai and/or one Geraji Anak Lipa) in Rumah Intai, Nanga Tada.

In order to induce such electors or voters to vote or refrain from voting, or to vote for the said *Aden ak Denong @ Gabriel Adit ak Demong* or refrain from voting for your petitioner in the said election.

[28] The main issue in (*Beal v Smith* was whether the petition should be taken 'off the file as invalid by reason of its not containing sufficient details'. This issue was answered in the negative by Bovill CJ who is the case said, inter alia: 'It was never intended to make the petition a document of great length, and in consequence of judge's discretionary power to order particulars, no injustice could result from its brevity'. It would appear, that other issues pertaining specifically, for instance, to the ambiguities or otherwise of the charges or pleadings even if the 'particulars' ordered to be produced were taken into account did not arise.

MATERIAL FACTS AND PARTICULARS

[29] In view of the issues focused on by both parties in the instant case, it would appear necessary to go into the nature of 'material facts' and 'particulars'. Learned counsel for the respondent quoted the following passage from pleadings: *Practice and Principles* by Sir Jack Jacob and Ian S Goldrein, *Sweet & Maxwell*, 1990 p 169, apparently to point out the difference between 'material facts' and 'material particulars':

Particulars are not a substitute for:

(a) necessary averments in the pleading;

(b) to state the material facts omitted in order, by filling the gaps, to make good an inherently bad pleading (*Bruce v Odhams Press Ltd* [1936] 1 K.B. 697); nor should a request for particular be used;

(c) to obtain information which can only be obtained by interrogatories (*Young & Company v Scottish Union Company* [1907] 24 TLR 73 at p 74) and the court will not sanction any attempt to administer interrogatories in the guise of seeking particulars (*Lister & Company v Thomson* [1891] 7 LTR 107).

[30] Presumably in the context of the instant petition, counsel says 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged which the petitioner is bound to substantiate before he can succeed on that charge. 'Particulars' on the other hand are all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition... the petitioner cannot utilize 'particulars' to widen any window of opportunities so as to render the provisions of r 4(1)(b) of the Election Petition Rules 1954 meaningless.

[31] In amplifying the difference between 'material facts' and 'particulars', counsel for the respondent refers to the Indian Supreme Court case of *Shri Udhav Singh v Madhav Rao Scindia* AIR 1976 SC 744 which states:

(38) In the context of a charge of corrupt practice, 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge leveled, the ground relied upon and the special circumstances of the case...

(39) 'Particulars' on the other hand, are the details of the case set up by the party'. 'Material particulars' within the contemplation of cl (b) of s 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of cl (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.

[32] *Azhar Hussain v Rajiv Gandhi* AIR 1986 SC 1253 (cited in *Chawla's Elections Law and Practice* by Mr PC Jain and Dr Mrs Kiran Jain, Bahri Brothers, 2004, p 1.592 para 3) was referred to in support of the respondent's contention, that 'a petition is liable to be summarily dismissed in case of petitioner's failure to furnish any of the material facts and particulars which are essential for disclosing a cause of action relating to a charge of corrupt practice'.

THE MANNER OF FORMULATION OF THE PLEADINGS COMPARED

[33] Reverting to the formulation of the pleadings exemplified in Form 7 of *Atkin's Encyclopedia of Court Forms* 1996, and as shown in both *Beal v Smith* and the instant petition, it is to be noted that albeit general - being bereft of the requisite particulars, the pleading, particularly para 3 of the petition in *Beal v Smith* considered by itself seems clear enough. In the instant petition, however, after stating what are purported to be the facts and grounds, the 'particulars' are given under the heading 'Particulars'. In the first place, in the context of the argument of learned counsel for the respondent, the question arises as to whether the mere statement the respondent 'personally and/or by his agent committed an offence... 'and then stating the provisions of law allegedly contravened, sufficiently discloses the material facts on

which the petitioner relies upon to support his allegation or to disclose a cause of action. Then there is the contention of learned counsel for the respondent, inter alia, that the particulars have been used to enlarge the pleadings, rather than narrow them. Counsel also submits that the particulars supplied by the petitioner to each of the charges are multipliers of the charges. The latter issues did not arise in *Beal v Smith*.

[34] Now, the specimen in Form 7 of *Atkin's Encyclopedia of Court Forms* 1996 earlier reproduced also seems to disclose a significant difference when compared to the pleadings in the instant petition. The Form (see particularly the words 'in that') shows, that the grounds including the facts and the 'particulars of the acts' are immediately and directly incorporated and correlated in such a manner as being indicative of the intention to portray more clearly the charge leveled against the respondent. The formulation of the grounds and 'the particulars of the acts' are not separated in such a manner as in the instant case as being capable of proliferating or fragmenting or at any rate altering the scope of the allegation ie, the grounds vis-a-vis the 'particulars'. For instance, in the instant case, in what is meant to be the grounds for charges 3(i) to (xiii), (xv) and (xvi) all that is stated is '... personally and/or by his agent, committed...' But under the heading 'Particulars' the following is stated:

> '... *directly or indirectly*, personally and/or by his agentfs) *or other persons(s) on his behalf*... '. The emphasis words or alphabet are not found in the purported grounds. It would seem, that the categories of persons through whom the respondent allegedly committed the alleged corrupt practice have suddenly proliferated or widened.

[35] For the aforementioned reasons, as earlier on indicated, it would appear that, in any case, the applicability of *Beal v Smith* to the instant petition has substantially been watered down.

APPLICABILITY OF INDIAN CASES

[36] Before proceeding further into the issues raised by the NOM, it would appear necessary to deal with the question whether Indian case authorities are applicable in dealing with the instant petition in any case within the context of the arguments of both parties. First, reproduction of the relevant provisions of the Malaysian and Indian legislations, the Indian Representation of People Act 1951 and the Election Petition Rules 1954:

Section 83 of the Representation of People Act 1951 provides:

> 83 Contents of petition. — An election petition,
>
> (a) Shall contain a *concise* statement of the material facts on which the petitioner relies". (Emphasis added).

Rule 4(1)(b) of the Election Petition Rules 1954 states:

> (4) Contents and form of election petition;
>
> (1) An election petition shall contain the following statements;
>
> (b) it shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

A Para (3) of the form of election petition set out under r 4(4) thereof provides:

And your petitioner s say that (here state the *concise* facts and grounds on which the petitioners rely). (Emphasis added).

B **[37]** Learned counsel for the respondent submitted that reading r 4(1) (b) together with para (3) of the form prescribed by the Election Petition Rules, 1954, 'the effect is the same as s 83(1)(a) of the Indian Representation of the People Act 1951 (RPA)'. *Dr Shafie Abu Bakar's* case was cited in support. Therein it was said by VT Singham J 'Although this rule (r 4 of Election Petition Rule 1954) is not couched in similar terms as s 83 of the Representation of the People Act 1951... I am however of the C view that the true purport and effect of it is similar to that Indian Act, 1951'. With respect, I agree with this view. So even if based on what was said in *Beal v Smith* and as submitted by the learned counsel for the petitioner, the Malaysian the Election Petition Rules 1954 'are...in pari material with the corresponding English legislation and rules', the view that 'the true purport and effect' of r 4 of the Malaysian Election Petition Rules 1954 'is similar' to that of s 83 of the Indian Representation of the D People Act 1951 would appear still tenable. Therefore, with due respect, it would appear substantially unsustainable the contention of learned counsel for petitioner, that 'the Indian cases are not... relevant here'.

[38] In any case '(w)hat is important is that it must be clear on the face of the E petition what relief is being sought and the petition discloses a cause of action. It is well settled that the failure to comply with the mandatory provisions of the act or rules would render the petition defective (see *Devan Nair's* case and *Mupi bin Tabib's* case). Concerning r 4(1)(b), I am of the opinion that as the word 'shall' has been used throughout, it is mandatory. The use of the word 'briefly' instead of 'concisely' as in F the Indian legislation would not affect the mandatory nature of its provisions' (per Charles NC Ho J, *Patau Rubis v Patrick Uren*. It would be noted that in *Patau Rubis v Patrick Uren*, Indian cases such as *Samant N Balakrishnan v George Fernandez & 5 Ors* and *Hadwari Lai Kanual Singh* (192) AIR Vol 59 SC 520 were referred to. It should be noteworthy as well, that Indian cases invariably also cite English cases for example in examining the nature of material facts and particulars (*Roop Lai Sathi* G *v Nachhattar Singh* AIR 1982 SC 1559)

ISSUES RAISED BY THE NOTICE OF MOTION FURTHER EXPOUNDED

[39] Reverting to the issues raised by the NOM, it would appear significant to note H that the petitioner decided to include what are stated to be 'particulars' in his pleadings. That being done, and if in doing so the petitioner considered the particulars as facts, and the petitioner's counsel has in fact urged the court to regard them so, the formulation of each of the charges in the petition as a whole must nevertheless be in strict compliance with the mandatory requirements of the r 4(1)(b) and (4) of the Election Petition Rules 1954. The basic question remains whether the I manner each of the charges was formulated has complied with the mandatory requirements of the said r 4(1)(b) and (4).

[40] Earlier in his written submissions, learned counsel formulated what he thought were the three main issues in the NOM. They are stated as follows:

(1) Whether the Election Petition (encl 6) or each of the pleadings failed to comply with the mandatory provisions of r 4(1)(b) of the Election Petition Rules 1954 which requires that it shall state the holding and results of the election, and shall briefly state the facts and grounds relied on to sustain the prayers?

(2) Whether the petitioner can give the particulars of the charges with matters of speculative allegations or statements of unlimited scopes which are capable of being used of for multiple charges or grounds to sustain the prayers?

(3) Whether the Election Court has jurisdiction to grant a relief or declaration that the petitioner was duly elected and ought to have been returned as prayed by him?

[41] Thereafter, it would appear that the learned counsel for the respondent proceeded to deal with numerous issues relating to these three main issues. I would later deal with what appear to be the issues heavily emphasized by learned counsel for the respondent and at the same time particularly focused on by learned counsel for the petitioner. In that context, not all issues raised by the respondent have to be dealt with.

[42] The learned counsel for the respondent had at the outset indicated, that the Election Court 'will consider only issues raised or advanced in (the NOM) on the basis of the pleadings contained in (the petition). To determine points of law raised in the NOM (presumably including the said three questions of law, counsel says the Election Court' does not need to refer to the facts or arguments or opinions advanced by each party in the aforesaid affidavits (presumably both parties' affidavits relating to the NOM) on the basis that all the averments in the petition at encl 6, in the meantime, should be assumed to be true irrespective of whether they were true or false'.

[43] The more crucial issues raised by learned counsel for the respondent may be laid out. The respondent's counsel submits 'each of the charges or allegations in the petition at encl 6 is vexatious, frivolous and not disclosing a cause of action... it is wanted (sic) for mandatory compliance of r 4(1)(b) of the Election Rules 1954 read with s 32(a), (b) and (c) of the Election Offences Act 1954. Such non-compliance is of fundamental and serious defect to the core of the petition. At the heart of the petition, ie, in subpara (3)(i) to (xvi) the petitioner merely pleads a bare statement alleging that the offences were committed by the respondent *personally and/or by his agent* or *someone else and/or the respondent by his agent or agents* contrary to the relevant provisions of the Election Offences Act 1954. A bare statement as to the allegation of offences is not a concise facts (sic) within the meaning of r 4(1)(b)... (Emphasis added.)

[44] The respondent's counsel further contends, that '(t)he allegation of corrupt practice or other election offences under the Election Offences Act 1954 is like fraud cases must be specifically pleaded and proved. In each of these charges from subpara

(3)(i) to (xvi) of encl 6, there is no pleading showing the grounds of corrupt practice or alleged offences in the shape of concise material facts in order to formulate a cause of action against the respondent... (B)y merely stating that an offence was committed by the respondent *personally and/or by his agent* or someone else and/or the respondent by his agent or agents with reference to the provisions of law is not enough, and such bare statement cannot be said to have disclosed a cause of action in the shape of all the material facts'. (Emphasis retained).

[45] According to the respondent's counsel, the petition's pleadings under each of subpara (3)(i) to (3)(xvi) of contain 'no material fact... (constituting) al the ingredients of the respective alleged offences or (correlating) the charges in the form of material facts against the respondent'. Counsel says 'there is no averment to show that any of the impugned acts or offences was committed by such agent or agents with his knowledge or consent'. This contention refers to the petitioner's allegation, that all the alleged acts or offences stated in the petition were committed '*by the respondent personally and/or by his agent, committed a corrupt practice in connection with the said election*'. (Emphasis added.) Where presumably a corrupt practice is committed not by the candidate himself but by another person or other persons, '(i)t is a requirement that such an offence must be committed with the knowledge or consent of the candidate. The learned counsel for the respondent submits, the pleadings 'clearly admit the fact that there was no such knowledge or consent on the part of the respondent and the petition must be dismissed in limine on this ground alone'.

[46] The respondent's counsel points out that 'the pleadings for each of the charges at encl 6 is nothing more than citation of statutory provisions and then jump to conclusions that the alleged offences were committed by the respondent personally and/or by his agent, committed a corrupt practice in connection with the said election'. According to counsel, the petition 'did not plead whether the alleged offences were committed within the constituency to which the respondent was returned as State Assemblyman nor did it plead which constituency the petition was sought to challenge the result or at all'. In counsel's view, 'enclosure 6 shows that the pleading were outrageous and the petitioner wants to use this election petition to ride rough shod over his political opponent, the respondent'.

[47] The submission of the respondent's counsel as above stated reflects the content of the respondent's NOM, which it is to be recalled basically prays for an order that the petition (encl 6) be struck out with costs. The main ground for such a prayer aimed at subparas (3)(i) to (3)(xvi) of the petition would appear to be the petitioner's alleged failure to comply with r 4(1)(b) of the Election Petition Rules 1954 read together with the relevant provision of the Election Offences Act 1954, namely ss 32(c), (a) and (b). To recap, allegations (3)(i) to (xvi) relates to corrupt practices under ss 8, 9, 10(a), (c) and (e) of the Election Offences Act 1954 read with s 32(c) of the same act, where as, allegations (3)(xv) and (xvi) relate respectively to general bribery, general treating and/or general intimidation and non-compliance with ss 8, 9, 10(a) & (c), 24b(1) and (3), 26(1) and/or 26(1)(f) of Election Offences Act 1954 to be read with ss 32(a) and (b) respectively.

[48] In respect of each of allegations (3)(i) to (xvi), learned counsel for the respondent contends '(the petition) failed to plead the concise statement of material facts on which the petitioner relies and grounds to sustain the prayer', thereby failing to comply with the mandatory provisions of r 4(1)(b) of the Election petition Rules 1954. The NOM further contends (a) the petition does not disclose a complete cause of action against the respondent, (b) the particulars to each of the pleadings are nebulous and misleading which are merely matters of speculative allegations or statements of unlimited scopes, and the same are capable of being used of for multiple charges or unlimited scopes, and the same are capable of being used of for multiple charges or grounds and tending to prejudice, embarrass or delay the fair trial of the petition, and (c) the petition is vague, indefinite, scandalous, frivolous or vexatious or is otherwise an abuse of the process of the court'.

THE ISSUES FOCUSED ON

[49] The focus of submissions by both parties is mainly on the manner the petition was formulated and worded. Rule 5 of the Election Petition Rules 1954 states:

> 5. Evidence not to be stated in petition but particulars may be ordered.
>
> Evidence need not be stated in the petition, but the judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and otherwise as may be ordered.

[50] Learned counsel for the respondent says in the instant case, particulars have been used to enlarge the pleadings, rather than to narrow them. In support, he cites *Lee Kuan Yew v Devan Nair* [1990] 3 MLJ 452 (a libel case) where it was held that 'the defendant, in giving particulars of the facts on which he relies in support of his plea of fair comment, must clearly confine such particulars to those relevant to the issues on the pleadings'. Presumably, the emphasis here is 'particulars of the facts on which (a party) relies in support of his plea'. In the instant case, under each allegation initially the petitioner merely named the alleged offence committed, stating the relevant provisions of the Election Offences Act 1954. This is the followed by the giving of the 'Particulars'.

[51] The question however arises as to whether the purported particulars should be considered as constituting the facts or part of the facts relied on by the petitioner in support of his allegations. The mere statement the respondent 'Personally and/or by his agent committed an offence... 'and then stating the provisions of the law allegedly contravened quite clearly does not disclose sufficiently the facts on which the petitioner relies upon to support his allegation or to disclose a cause of action. In the manner each of the allegations was formulated, the petitioner clearly appears to be dependent upon the 'particulars' stated under each description of the offence allegedly committed in order to show that the purported 'material facts' have been pleaded.

[52] In any case, it is also the respondent's counsel's view, that the particulars supplied by the petitioner to each of the charges are multipliers of the charges. Presumably in the manner that the 'particulars' is worded, learned counsel for the respondent contends it is 'repugnant'. It offends the very basic object or legal principle of particulars, which is fundamental to our adversarial system of pleading. Counsel contends the 'particulars' 'expands the pleadings rather than narrowing'. Presumably, what is meant here is that rather than focusing and thereby amplifying the facts relied on, the 'particulars' supplied proliferate the generalities of what purports to be the 'material facts' pleaded in support of the allegations. With respect, however, it seems to me the ultimate question would still be whether the bare statement that an offence was committed by the respondent 'personally and/or by his agent' with reference to the provisions of law read together with the 'particulars', nevertheless constitute sufficient pleading in the sense that all the material facts are pleaded so as to disclose a cause of action and, that the formulation of the relevant pleading is done in a correlated manner so as to enable the respondent to meet the charge leveled against him.

[53] In *Roop Lai Sathi v Nachhattar Singh* AIR 1982 SC 1559, a case involving the deletion by the high court of certain paragraphs of an election petition, the following was said:

> The dictum of Scott LJ. in (*Bruce v Odhams Press Ltd* [1936] 1 KB 697) has been quoted with approval by this court in *Samant N Balakrishan v George Fernandez* [1969] 3 SCR 603: (AIR 1969 SC 1201) and while observing that the requirements of s 83 are mandatory, the distinction between material facts and particulars was brought out in the following terms (at p 1212 of AIR):
>
> The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present a full picture of the cause of action with such further information in detail as to make the opposite party understand the cause he will make the opposite party understand the case he will have to meet.
>
> Thus, the word 'material' in material facts under s 83 of the (Representation of the People) Act (1951) means facts necessary for the purpose of formulating a complete cause of action; and if any one 'material' fact is omitted, the statement or plaint is bad; it is liable to be struck out. The function of 'particulars' is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice.

[54] *SN Balakrishna v Fernandez* AIR 1969 SC 1201 concerns the ingredients to be proved by a petitioner alleging a corrupt practice. Therein it is stated:

> There is however a difference of approach between the several corrupt practices. If for example the charge is bribery of voters and the particulars give a few instances, other instances can be added; if the charge is use of vehicles for free carriage of voters, the

particulars of the cars employed may be amplified. But if the charge is that an agent did something, it cannot be amplified by giving the particulars of acts on the part of the candidate or vice versa. In the scheme of election law they are separate corrupt practices which cannot be said to grow out of the material facts related to another person. Publication of false statements by an agent is one cause of action, publication of false statements by the candidate I s quite a different cause of action. Such a cause of action must be alleged in the material facts before particulars may be given. One cannot under the cover of particulars of no corrupt practice give particulars of a new corrupt practice. They constitute different causes of action.

Since a single corrupt practice committed by the candidate, by his election agent or by another person with the consent of the candidate or his election agent is fatal to the election, the case must be *specifically pleaded and strictly proved. If it has not been pleaded as part of the material facts, particulars of such corrupt practice cannot be supplied later on*. (Emphasis retained as per submission of respondent's counsel).

[55] Drawing support from the above quoted portions from Indian Supreme Court cases, the respondent contends 'the 'particulars' supplied to each of the headings from subpara (3)(i) to (xvi) do not bring the respondent to any issue. All the particulars as written intended to enlarge the issues or allegations and prevent the respondent from knowing what he has to meet at the trial. The ingredients of corrupt practice by an agent are different from the candidate and hence all the facts must be specifically pleaded to establish a cause of action'. Learned counsel for the respondent further says, '(t)he particulars here cast a net wide open leaving the integrity and credibility of the petitioner to criticisms. It appears the particulars given there is a tactical maneuver for unfair practices best known to him. The petitioner is unfairly putting the respondent on a wild-goose chase but for a political agenda of the petitioner. The particulars are embarrassing. It is impossible for the respondent to meet such wide accusations should the petition come to trial. The petitioner uses 'particulars' as a platforms to embarrass and harass his rival politician... The particulars of all the allegations given to the pleadings extended his campaign period as worded to any time before, during and/or after the said election'. The expression is indefinite and goes to extremes. According to the language used by the petitioner, there is no end to his complaints, which can cover today, tomorrow, each and everyday after the said election. If the respondent does anything good or of valuable consideration now or anytime to 'Rakyat' he (sic) may be treated as bribery by the petitioner... But it is without logic or commonsense. He must know the fundamental feature of 'pleadings' and the purpose of 'particulars' if he wants to play a game of law with the respondent through an election petition.

SOME OF THE MAIN RELATED ISSUES CONSIDERED

[56] In his initial submission, the respondent's counsel made numerous other points some of which appear to be repetitious. Anyway, in support of his contentions, learned counsel for the respondent cited several cases and textbooks, among them *Borough of Pontefract*, case XXV O'M & H 200, *O'Malley Election Cases* 1869–1929, *NS Bindra's Pleadings and Practice* (8th Ed, 1997) pp 106, 108, *Rahim Khan v*

Khurshid Ahmed & Ors [1974] MLB (Ind) 138, *Gurdial Singh Nijar v KS Balakrishnan* [1993] 2 CLJ 75 ([300] MD 6), and *Azhar Hussain v Rajiv Ghandi* AIR 1986 SC 1253.

In *Borough of Pontefract* in not granting general costs to the petitioner concerning unproved charges, Mr Justice Hawkins said:

> ... having regard to the scandalous and reckless way in which the charges have been multiplied, when those who put them upon the particulars must have known it was impossible to support them,... The petitioner ought to have no general costs of the petition at all... We have taken what may be considered a strong course, because we wish to mark our disapproval of the reckless mode of heaping charges in the way they have been heaped together, and putting the person affected by them to the inconvenience and embarrassment of meeting them, and to mark our sense of the conduct of those who tolerated what I think to be so cruel and vindictive a proceeding.

NS Bindra in *Pleadings and Practice* (8th Ed, 1997) p 106 said:

> The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, so to save unnecessary expense, and avoid allowing parties to be taken by surprise... What particulars are to be stated, must depend on the facts of each case. But, it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guards, and tell them what they will have to meet when the case comes for trial. Particulars thus prevent 'surprise' at the trial, and limit enquiry at the trial to matters set out in particulars. They tend to narrow issues and ought to be encouraged (*Philip v Philips* 4 QBD 127 AT P. 139). (Emphasis added.)

[57] Presumably to highlight the need to sufficiently substantiate an election petition, learned counsel quoted the following from *Rahim Khan v Khurshid Ahmed & Ors* [1974] MLB (Ind) 138:

> ... An election once held is not to be treated in a lighted-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally, must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the relumed candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

[58] In a Malaysia case *Gurdial Singh Nijar v KS Balakrishnan* [1993] 2 CLJ 75, the respondent quoted the following:

> It is well settled that an allegation of corrupt practice is of a quasi-criminal nature in as much as a finding of corrupt practice entails penal consequences. The onus is on the petitioner to prove corrupt practice viz bribery beyond reasonable doubt by evidence which is clear, unequivocal and unambiguous.

[59] Perhaps, it is pertinent to note that in *Gurdial Singh Nijar v KS Balakrishnan*, the ground of the petition was 'that a corrupt practice under s 32(c) of the Election Offences Act 1954 was alleged to have been committed by the respondent or his agents with his consent and/or knowledge in that on 20 October 1990 at or about 8.40pm until the early hours of the election day, land titles were given to voters in the said constituency at Felda Cahaya Baru in pursuance of a promise made earlier that day'. Here it would appear there was no complaint in the manner the allegation or charge was framed, and where the allegation of commission of corrupt practice involves the respondent's agents, the pleading would appear to have made it clear that such commission was committed with the respondent's consent and/or knowledge. In the instant case, the pleadings, even if the 'particulars' are taken into account, do not appear to have shown whether the alleged commission of corrupt practice by the respondent's agents was done with the respondent's consent and/or knowledge. Neither are such consent and/or knowledge pleaded where the 'particulars' include the involvement of 'other person(s) on (the respondent's) behalf... '

[60] *Azhar Hussain v Rajiv Ghandi* AIR 1986 SC 1253 involves an appeal by a petitioner against the dismissal of his election petition on the ground that 'it did not comply with the mandatory requirement to furnish material facts and particulars enjoined by s 83 of the Representation of the People Act (1951) and that it did not disclose a cause of action... ' One of the allegations leveled against the respondent was corrupt practice involving the distribution 'by the respondent his election agent and a large number of other persons with the consent of the respondent' during the election campaign of a pamphlet containing false materials regarding the personal character of the petitioner. The high court observed, '... It was the duty of the petitioner to make this choice of the particulars person with whose consent the statement was made or distributed... The petitioner instead of pinpointing the particular person who distributed the booklet or with whose consent it was distributed made a broad and vague statement that it was done by the respondent, his election agent, a large number of other persons with his consent and/or with the consent of his election agent. The date, time and place of distribution, the names of the agents or persons who distributed it have not been indicated and, therefore, the pleading is vague and cannot be sustained'.

[61] Upon appeal, the Supreme Court of India approved of the observation of the high court, stating:

> The pleading therefore does not spell out the cause of action. So also on account of the failure to mention the material facts, the court could not have permitted the election petitioner to adduce evidence on this point. It would therefore attract the doctrine laid down in *Nihal Singh*'s case (1970)(3) SCC239) and there would be nothing for the respondent to answer.

[62] The underlining was supplied by learned counsel for the respondent when in his submission in support of his contention in the instant case he quoted that portion of the judgment of Thakkar J of the Indian Supreme Court. It was also stated in *Azhar Hussain v Rajiv Ghandi*,'... It is settled law that an omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all...

The contention that even if the election petition is liable to be dismissed ultimately it should so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable'.

BEAL v SMITH REVISITED

[63] Due to the heavy emphasis placed upon it by the learned counsel for the petitioner, albeit at the risk of being repetitious, a further consideration of the issues relating to the decision in *Beal v Smith* would appear necessary.

[64] In *Beal v Smith* it would appear that the purported 'facts and grounds upon which the petitioners rely' contemplates of the respondent having committed bribery, treating and undue influence 'by himself and other persons on his behalf'. In the instant case, the 'Particulars' of all the charges except possibly subpara (3)(xiv) mention 'or other persons' instead of 'and other persons on his behalf'. In the instant case the word 'or' instead of 'and' was used, and the phrase 'on his behalf' is not stated. Thus, in that sense the charge in *Beal v Smith* despite of its apparent brevity and generality was more definite and clearer. All that was needed was the appropriate particulars.

[65] Furthermore, general and brief though they were, the purported facts and grounds in the charge were stated in a correlated manner all logically fitted into a paragraph, rather than being fragmented albeit purporting to be in one paragraph as seems to be case in the instant petition. In this context as well, and having regards to the manner each of the charges in the instant petition is formulated and worded, the extent of the applicability and therefore the persuasiveness of the decision in *Beal v Smith* would appear very limited.

[66] It may also be pertinent to note, that reliance by the learned counsel for the petitioner on the United Kingdom cases and the English legislation and rules seems ambiguously multifaceted. As earlier indicated, reliance for instance was placed on *Atkin's Encyclopedia of Court Forms* 2nd Ed, Vol 18, 1996 which cites not only *Beal v Smith* an 1868 case, but also, inter alia, the English Election Petition Rules 1960 in which the corresponding r 4(1)(b) is worded quite differently from the Malaysia r 4(1)(b). In the circumstances, the reliance on *Beal v Smith* seems to have been complicated by the petitioner's reliance practically in the same breath upon *Atkin's Encyclopedia of Court Forms*. This would appear to be so especially in the context of the submission of counsel for the petitioner concerning his reliance on Forms 5 and 7 shown in *Atkin's Encyclopedia of Court Forms*.

[67] In any case, the petitioner's heavy reliance on *Beal v Smith* still raises the following questions: If, as seems to be the case, the petitioner urges this court to regard the 'Particulars' to be part and parcel of the 'facts and grounds on which the petitioners rely' then, is not the petitioner not disregarding the difference between 'facts' or 'material facts' and 'particulars' which has earlier on been discussed? In *Beal v Smith*, at least, it was definite that the 'particulars' alleged to be lacking were not purported to be stated in the pleading itself. In the instant case, concerning each of the sixteen charges or allegations, the stating of 'Particulars' would appear to be done

separately from what purports to be the 'facts and grounds' or perhaps, more accurately, only the 'grounds' (to some extent I have earlier in this judgment dealt with this aspect).

THE MANNER OF FORMULATION OF THE CHARGES IN THE INSTANT PETITION FOCUSED ON

[68] With respect, in my view in the manner the petition was formulated, the petitioner has put himself into a rather sticky situation, whereby what he now wishes the court to regard as 'material facts' or 'facts' he himself has specifically labeled as 'particulars', and furthermore and more importantly, such 'particulars' which he now urges this court to regard as 'material facts' or 'facts' do not appear to be fittingly incorporated into or correlated with what purports to be the initial 'facts and grounds' (para (3) of the form under r 4(4) Election Petition Rules 1954), or 'the basic and preliminary facts' (per Dr AS Anand CJ *Mahendra Pal v Ram Dass Malanger and Others* AIR 2000 SC 16). As I have pointed out earlier, the view implied here is actually reflected not only in paras 3 and 1 of respectively Forms 5 and 7 of *Atkin's Encyclopedia of Court Forms*, but also in the manner the petition referred to in *Beal v Smith* was formulated. In other words, the manner of incorporating and correlating the 'particulars' which the petitioner in the instant case now says should be considered as part and parcel of the 'fact and grounds' or even just the 'ground', is not at all the same as the manner indicated by the said Forms 5 and 7 and even by the formulation of the petition referred to in *Beal v Smith*.

[69] Now, another question that arises from the manner of formulation of the instant petition is this: if the 'particulars' referred to therein by the petitioner are to be considered separately as 'particulars' as opposed to 'the basic and preliminary facts... essential to disdose a complete cause of action... '(*Mahendra Pal v Ram Dass Malanger and Others*, then where are the 'preliminary facts' which if considered by themselves would disclose a complete cause of action? There is therefore a dichotomy inferable from, or perhaps more appropriately, caused by the manner the instant petition was formulated. This, in the aforementioned circumstances of the instant petition, in my view and with respect, constitutes a fatal non-compliance of the relevant provisions of the Election Offences Act 1954 and the Election Petition Rules 1954. In any case, the formulation of the petition as earlier indicated, seems also seriously out of tune with the (specimen formulation indicated by Forms 5 and 7 *Atkin's Encyclopedia of Court Forms* and with the formulation of the petition dealt with in *Beal v Smith* (both of which were relied on by the petitioner himself). Even on this ground alone, the petition ought to be struck out.

[70] From what could be gleaned from the numerous cases cited, I am of the view that in allegations of the nature as in the instant case — rather than isolating and reserving them to be described as 'particulars', all material facts relied on by a petitioner should have been stated and incorporated into the main allegation or charge so as to portray as concisely as possible the basic framework of the offence concerning which the respondent is alleged to have committed. Such a manner of formulation in my view would have probably helped in narrowing down the issues which the petitioner expects the respondent to answer. As the respondent's counsel

has submitted, '(B)y merely stating that an offence was committed by the respondent 'personally and/or by his agent' or someone else and/or the respondent by his agent or agents with reference to the provisions of law is not enough and such bare statement cannot be said to have disclosed a cause of action in the shape of all the material facts'. In the instant case, it would appear tenable the submission by the learned counsel for the respondent that '... There is no material fact written at each of the said subpara can be said it constitutes all the ingredients of the respective alleged offences or correlate the charges in the form of material facts against the respondent'.

[71] In other words, the charge or allegation itself must contain the concise material facts relied on to disclose a complete cause of action, instead of just alleging the respondent 'personally and/or by his agent' has committed an offence, and thereafter refer to the legal provisions purportedly infringed. Framing the allegation or charge in the correlated manner I have just adumbrated would have evinced the impression that — not only does the petitioner know quite precisely in the context of the invoked statutory provisions the nature and substance of the allegation he is leveling against the respondent, but and more importantly in my view also that such a manner of formulation would have enabled the respondent to see more clearly, again in the context of the invoked statutory provisions, the whole picture and know the properly correlated main legal and factual ingredients of the charge or allegation he has to meet. Any other particulars that the petitioner thereafter wishes to provide and/or the respondent wishes to procure would merely provide the finishing touch so to speak to the basic framework of the charge or allegation already laid out. In the words of M Hidayatullah DJ in *SN Balakrishna v Fernandez* AIR 1969 SC 1202: 'The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet'.

[72] It would appear to me that for the above mentioned purpose, and in compliance with the relevant provisions of the Election Offences Act 1954 and the Election Petition Rules 1954, and where a petitioner wishes to immediately incorporate the material facts together with the grounds, there would be little choice but to follow the sample of petition forms 5 and 7 of *Atkin's Encyclopedia of Court Forms* referred to earlier. In the final analysis, the petitioner would have to choose a form which would portray his definiteness as to what he considers as facts and grounds and what he considers as mere particulars, and then equipped with those material facts proceed to formulate the charge so as to disclose a complete cause of action. Once a petitioner tries to tread in the middle, as seems to have been done in the instant case, the consequential manner of formulation of the petition could, inter alia, raise serious ambiguities which in turn would make it difficult for the respondent to sufficiently appreciate the nature and/or scope of the charges. So for instance in the instant case, the respondent appears to have been perplexed by subparas (3)(i) to (xvi) asking, inter alia, where are the material facts? On the other hand, the petitioner, implying the respondent's reaction to be resembling that of an ostrich burying its head in the sand, maintains that the facts are already there — under the heading 'particulars'.

[73] Due to, inter alia, ambiguities, not only do the pleadings in the instant case appear incapable of telling precisely what the respondent has to meet, they also appear indicative of the petitioner being himself quite unsure as to the nature and/or scope of the offence or offences the respondent had 'personally and/or by his agent' or (under the 'particulars') "directly or indirectly, personally and/or by his agent(s) or other person(s) on his behalf allegedly committed.

[74] Perhaps, in amplification of the above, it may be said that permitting the petitioner in instant case in framing the charge or allegation in such a bare manner, followed by the 'particulars' would open up opportunities for the petitioner, inadvertently or otherwise, to proliferate the charge or allegation or generally to — in the words of counsel for the respondent — 'muddle up' the charge or allegation in such a manner, that he would lose touch with both the legal and factual matrices of the offences that he thinks the respondent has committed. Clearly, at the outset an allegation or charge framed in such a manner, could make it difficult for the respondent to clearly appreciate the nature and extent or scope of the charge or allegations he has to meet.

[75] It seems to me contrary to the intention of the relevant provisions of the Election Offences Act 1954 and the Election Petition Rules 1954, that in the manner the charges or allegation are framed such as in the instant case, it is left to the respondent to correlate the 'Particulars' to the main allegations. In line with the strict requirement as to compliance with the relevant statutory provisions of the Election Offences Act 1954, and the Election Petition Rules 1954, and to give effect to the legislative intention, that an election petition should be completed within the prescribed time frame or sooner, the burden should be on the petitioner to incorporate and aptly correlate material facts as opposed to evidence in each of the charges or allegations he levels against the respondent. In this connection it would appear pertinent the words of M Hidayatullah CJ, when discussing the requirements of s 83 of the Representation of the People Act 1951 in *SN Balakrishna v Fernanda* AIR 1969 SC 1202:

> Section 83 (similar to our r 4(1)(b) then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires *first a concise statement of material facts and then* requires the fullest possible *particulars*. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct
>
> The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficacy of the words 'material facts' will be lost. (Emphasis added.)

[76] Learned counsel for the petitioner contends '(o)ur Election Offences Act 1954 and Election Petition Rules 1954... Originate from legislation in England and....are equipollent to and in pari materia with the English legislation and rules'. Thereafter and as earlier indicated, the learned counsel referred to *Atkin's Encyclopedia of Court Forms* (2nd Ed) Vol 18, 1996, *Atkin's Encyclopedia of Court Forms* (1969) *LR Creditor's Petition* 145, the *Greenock Election Petition* (referred to in the footnote of Beat v Smith), *Ruhimin Adzim @ Ruhimin bin Ajim v Tan Sri Bernard Dompok & Ors* [2005] 1 MLJ 345, *Wifred Nissom v Datuk Stephen Yong & Anor, Mohamad Shamsuddin bin Moktar v Chong Kim Mook & Anor*Kuching Petition No K1 & 2 of 1979 (unreported) and briefly, *Ziyauddin Burhanuddin Bukhari v Brijmohan Ramdass Mehra & Ors* AIR 1975 SC 1778 and *Sardar Harcharan Singh Brar v Sukh Darshan Singh & Ors* [2004] INSC 713.

[77] The learned counsel for the petitioner's having quoted a portion of para 8 from *Atkin's Encyclopedia of Court Forms* which refers to Forms 5 and 7 has been dealt with earlier. The learned counsel contended that the said Forms 5 and 7 'would show the generality with which the facts and grounds are briefly stated'. Thereafter, Form 7 was reproduced showing para 1 (Corrupt Practices) and 2 (Illegal Practices). This is followed by the reference to *Beal v Smith* (1869) LR CP 145 which essentially reflects the above mentioned passage quoted from *Atkin's Encyclopedia of Court Forms*. Anyway, a perusal of the said para 1 of Form 7 (earlier on quoted in full) would appear to show, that the manner of formulation appears wholesome and correlative in the sense, that the first part of para 1 states the grounds including the type of offence in respect of with the respondent is alleged to be 'guilty of, and the second part gives the particulars of the acts alleged to constitute practices'. The first part appears to be logically and fittingly correlated with the second part by the words 'in that'.

[78] In this connection, it seems the learned counsel for the petitioner refers to the first and second part of each of subparas (3)(i) to (xvi) as respectively 'ground' and 'facts relating to the ground'. This quite clearly implies a concession on the part of counsel, that the portion of the subpara (3)(i) to (xvi) which he refers to as 'ground' is devoid of or at any rate lacks sufficient facts, and that such facts would only be found under the 'Particulars' stated under the second part each of the subparagraphs. So it seems that the learned counsel for the petitioner describes as 'facts' what he has, in the first place, labeled as 'particulars' in enclosure 6. In Form 7 of *Atkin's Encyclopedia of Court Forms* (Vol 18, 1996) the 'facts relating to the ground' referred to by counsel as such, is actually described as 'particulars of the acts alleged to constitute practices'. Anyway, the point is, in the said Form 7 after stating the ground, the 'particulars of the acts alleged to constitute practices' are immediately set out in such an uninterrupted and correlated manner so as to actually make the said 'particulars' part and parcel of the ground, thereby portraying quite clearly their relationship in terms of the relevant factual and legal matrices. In my view, despite of the phrase 'or one to the like effect', this specimen is indicative of the correct the mode of formulating a charge or allegation in an election petition required by the amended para (3) of the form under r 4(4) of the Election Petition Rules 1954. Such a mode of formulating a charge would appear more conducive to or more in tune with the requirement of conciseness of the 'facts and grounds" contemplated by

the said para (3) so as to sufficiently enable the respondent to meet the charges leveled against him.

FAILURE TO PLEAD RESULT OF THE ELECTION

[79] In the petitioner's counsel's skeletal submission in reply to the respondent's counsel's main submission 'A', a complaint was raised that there is no ground given in the NOM relating to the petitioner's failure to plead the 'result of the election'. In reply, the respondent's counsel referred to r 4(1)(b) of the Election Petition Rules 1954 which states, inter alia: 'it shall state the holding and result of the election...'. Learned counsel then referred to the said *Atkin's Encyclopedia of Court Forms* — Forms 5 and 9, para 2 in both forms of which specifically indicates the need to state the number of votes received by the relevant candidates. Having regards to the wordings of r 4(1)(b) of the Election Petition Rules, particularly the word 'shall' and based on Forms 5 and 9 in *Atkin's Encyclopedia of Court Forms*, with respect, the petitioner's omission to plead the result is contrary to the mandatory requirement of the Election Petition Rules 1954. And as such the submission that even on this ground alone, the whole petition should be struck out would appear tenable.

THE USAGE PER SE OF THE PHRASE 'BEFORE, DURING AND/OR AFTER'

[80] Presumably in justifying his usage of the said phraseology, 'before, during and/or after', the petitioner's counsel referred to *Atkin's Encyclopedia of Court Forms*, Form 7 in which such phraseology is used. This was in response to respondent's objection to the use phraseology 'before, during and/or after'. The respondent's counsel however contends Form 7 in *Atkin's Encyclopedia of Court Forms* is only 'a rough guide', having no legal effect. Due to the usage of the term 'concise' in para (3) of the form under r 4(4) of the Election Petition Rules 1954, prima facie the said objection by the respondent's counsel would appear well-founded. But it seems to me the ultimate issue would still be whether or not the usage of such phraseology would give rise to serious ambiguities resulting in the respondent being unable to meet the charges leveled against him.

[81] Learned counsel for the respondent refers to *The Haggerston Division of the Borough of Shoreditch* 1896, 5 O'M & H 68, *O'Malley Election Cases* 1896–1929 (pp 68–88). The case concerns a petition which included 'a further allegation of the commission of other corrupt and illegal practices before, during and after the said election'. In this case the petitioner was ordered to deliver 'particulars of the nature of the general charges'. In compliance with the said order, the petitioner delivered particulars which included 'allegations of illegal practices in connection with the return of election expenses...' The striking out of these allegations by the court was upheld by the Court of Appeal 'on the ground that it was not competent to the petitioner to include in his particulars... Of offences alleged to have been committed after the date of the petition... 'According to counsel, *The Haggerston Division of the Borough of Shoreditch* is a case where 'because of the wordings 'before, during and/or after' then it is a fatal pleading because it covers even after the election, even after the petition'. Based on *The Haggerston Division of the Borough of Shoreditch* and Form 7

in *Atkin's Encyclopedia of Court Forms*, it seems that a reading of a petition as a whole must evince some certainty, that allegation of the commission of corrupt or illegal practices after election does not include such commission which were to occur only after the date of the petition. A reading of the allegations in the instant petition however does substantially evince such certainty, thereby making doubtful the sustainability of the respondent's counsel's afore-mentioned contention. Except for the usage of the word 'offer' which is in the present tense, in substance the alleged commission of the various corrupt or illegal practices could not have been intended to include alleged commission thereof after the date of the petition.

Particulars Of The Acts Alleged To Constitute Practices — Whether Given

[82] Reverting to *Atkin's Encyclopedia of Court Forms*, Form 7, particularly the portion which says [give particulars of the acts alleged to constitute practices, e.g. in that the said JK...], the respondent's counsel says - this shows the ingredients of the offence ie, to constitute the cause of action. According to counsel, in the instant case the petitioner left out this part. The petitioner's counsel submits that all that has been pleaded in paras (3)(i) to (xiv) of the petition, including the facts therein set out under the heading of 'particulars', must all be looked at in totality. To some extent, I have earlier dealt with this matter in connection with the usage of the words 'in that' shown in the said specimen Form 7. In this regard, I have already indicated that the petitioner should have followed as close as possible the wording in Form 7, where the 'particulars of the acts alleged to constitute practices' are immediately set out after the mentioning of the grounds, without inserting any separating phrase in between, thus immediately portraying how the grounds are correlated with the facts, thereby giving a wholesome, correlated view of the nature of the cause of action attempted to be raised. I have earlier adumbrated on the reasons why I am of this view. Hence, in the instant petition, putting aside the issue involving what has been expounded to be the difference between 'particulars' and 'facts', it would appear quite incorrect to say the petitioner did not provide 'particulars of the acts alleged to constitute practices'; rather, the manner of incorporating or correlating the said 'particulars' appears to have given rise to serious ambiguities as to, inter alia, the precise nature and scope of each of the charges leveled against the respondent.

THE USAGE OF THE PHRASE PERSONALLY AND/OR BY HIS AGENT(S) OR OTHER PERSON(S) ON HIS BEHALF WHETHER THE NAMES SHOULD BE GIVEN

[83] The learned counsel for the respondent raises the point about the usage of the words 'personally and/or by his agent(s) or other person(s) on his behalf', saying 'we do not know who these people... ' In response to the submission of learned counsel for the petitioner that 'the petitioner has provided better particulars than Form 7', learned counsel for the respondent referred to Form 7 and read its para 1 under the heading 'Corrupt Practices':

> That the said JK was [personally or by his agent] guilty of the corrupt practices of [... bribery.... Or as the case may be] before, during and/or after the said election contrary to the provisions of section... of the Representation of the People Act 1983 [give particulars of the acts alleged to constitute practices], eg in that the said JK aided, abetted, counseled

or procured certain persons, namely PQ and RS... to personate and vote at the said election as and for certain other persons, namely QQ and SS, whose names appeared on the register of electors for the said [constituency] but who [were fictitious persons or were dead or did not themselves vote] and that the said votes so recorded are void and ought now to be struck off the poll [or as the case may be].

[84] Counsel for the respondent points out, that here 'the names are given'. This necessarily implies the necessity to give the names of the petitioner's agent(s) or other person(s) on his behalf especially if the 'particulars' are to be considered as part of the 'facts and grounds'. But again there is uncertainty, in the sense that if the 'particulars' are considered strictly as such then by providing such particulars the petitioner has portrayed himself as having already provided the 'particulars' presumably to fill up the missing facts. In this context, there should, therefore, be no longer any need to require further particulars eg the names of at least, the persons categorized as other person(s) on his behalf. In other words, should the matters stated under the 'particulars' be strictly considered as 'particulars' rather than 'facts', such particulars should then have included the names of the other person(s) on (the respondent's) behalf. But obviously the 'particulars' do not include, inter alia, such names. So perhaps such 'particulars' were intended by the petitioner to be part of the 'facts and grounds'. If that were to be the case, then and as earlier on discussed, such 'particulars' should have been closely incorporated and correlated into the grounds which in substance appear to contain only the allegation of having committed an offence in contravention of certain legal provisions. In this respect, as earlier indicated, the formulation of the charges and 'particulars' — especially the latter, is bad and the petition ought to be struck out.

[85] It should also be pointed out, that learned counsel for the petitioner himself has actually considered the statements '(the respondent)... committed a corrupt practice...' and non-compliance with or infringement of the provisions of as 'facts' (see paras 14 and 15 of his written submission marked 'B'). If those statements are facts then should the statement under the 'particulars' be regarded strictly as mere 'particulars' rather than facts? If so, then by themselves the facts and grounds preceding the 'particulars' should be capable of disclosing a cause of action. But the petitioner's counsel does appear to be urging the court, not only to regard the 'particulars' as 'facts' but also that such facts be considered as part and parcel of presumably the 'facts and grounds on which the petitioners rely'. However, as discussed earlier, the 'particulars' do tend to, inter alia, expand the scope of the purported initial 'facts and grounds' and, that the said 'particulars' do appear to be not properly incorporated into or correlated with the initial 'facts and grounds' thereby leaving it entirely upon the respondent to do the necessary incorporation and correlation. That this is so is actually reflected in the submission of the petitioner's counsel himself, In our present case, every one of the subparagraphs of para 3 of the petition states aground whether it is under s 32(c), (b) or (a). The other matters in the subparagraphs of para 3 (of enclosure 6) are all facts relating to the grounds identified. The point is, not only must it be shown that the 'particulars' are related to the alleged facts and the grounds, but more importantly it must also be shown the logical correlation between them. Such a concise and clear manner of formulation should then be capable of not only disclosing a complete cause of action, but also of

enabling the respondent to adequately meet the charge leveled against him. Anyway, as also earlier indicated, in as much as it leaves the task of correlating and incorporating the 'particulars' to the 'facts and grounds' to the respondent, the manner in which subparas 3(i) to (xvi) was formulated is bad, and on that ground alone the petition ought to be struck out.

ALLEGATIONS OF NON-COMPLIANCE WITH THE ELECTION OFFENCES ACT 1954

[86] Learned counsel for the respondent contended that, all the pleadings where terms include the respondent and/or his agent or other persons on his behalf is a non-compliance with s 32(c)... because s 32(c) - the wording are words in the alternative manner, that means I can only charge one class of person at one time - because under s 32(c), it requires knowledge and consent of the candidates... But here the wordings in the particulars did not state whether these other persons were with the knowledge or consent of the respondent which is expressly required by the s 32(c). With respect this contention is tenable having regards to the wordings of s 32(c) of the Election Offences Act 1954 and *Dr Shafie*'s case cited by the respondent's counsel. On p 370 of the said case, it is stated:

> Where an election petition is grounded under this proviso, it must state and contain the following:
>
> (1) That corrupt practices or illegal practice was committed in connection with the election...;
>
> (2) The petitioner must clearly identify the person who he alleges have committed the offence adumbrated in paragraph (1) above. It may have been committed by either the candidate himself; or by some one else with the candidate's knowledge or consent; or by any of the agent of the candidates.

Whether The Pleading Is Capable Of Presenting A Correlated Statement Of The Facts And Grounds So As To Enable The Opposite Party Adequately Understand The Case He Will Have To Meet — Further Considered

[87] Even if I am wrong in my view hitherto expressed, and that perhaps it is immaterial how the pleading or charge or allegation is framed as long as, considered in its entirety, it concisely raises all the material facts and the legal provisions relied on in such a manner as being capable of sufficiently and unambiguously portraying to the respondent the nature and scope of the charge or allegation he has to meet, ie disclosing a complete cause of action, I am still of the view that in the manner the charge or allegation or pleading was framed followed by the 'particulars' are incapable of presenting as full a picture as of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet, (per M Hidayatullah CJ, *SN Balakrishna v Fernandez* AIR 1969 SC 1202, para 29, p 1212).

[88] Under the 'Particulars' of each of the allegations (except possibly allegation (3)(xiv)) against the respondent, the respondent is said to have directly or indirectly, personally and/or by his agent(s) or other persons on his behalf committed corrupt

or illegal practices. These agents and 'other persons' have not been identified. Furthermore, and more seriously, what purports to be the 'grounds' under the first part of each of the subparagraphs in enclosure 6 contemplates of only the respondent 'personally and/or by his agent, committed a corrupt practice... ' But what purports to be the 'particulars' mention, not only the (respondent)... personally and/or by his agent(s)... 'but also what was stated in the 'grounds'. Keeping in mind that the giving of 'particulars' is intended to fulfill the need for more 'particulars', such formulation of the pleading would appear to have failed in this respect. This, justifiably in my view, prompted the respondent's counsel to submit: The particulars is (sic) so wide like casting the net wide.

[89] Learned counsel for the petitioner contends, based on what is pleaded, which for the present purpose is taken to be true, this court can find that there is corrupt practice committed by the respondent or his agent, and so can avoid election of the respondent under the ground in s 32(c) which has been specifically pleaded. I have discussed the reasons why the petition ought to be struck out based upon the manner in which it was formulated, and in any case upon, inter alia, ambiguities resulting from such formulation ie, even if the 'particulars' were to be considered as part of the 'material facts'.

[90] Now focusing on some of the charges - allegation (3) (xiv) relates to s 9 of the Election Offences Act 1954, which contemplates of undue influence committed by a person by himself 'or by any other person on his behalf... ' The main ground for charge (3)(xiv) states, the (respondent) personally and/or by his agent, committed corrupt practice... by committing... undue influence... In the 'Particulars', however, while it is stated that one *Usul ak Basit* is a cousin and agent of the respondent, it is not specific as to whether the said 'agent' did what he is alleged to have done on behalf of the respondent as provided by s 9 of the Election Offences Act 1954. Neither is it pleaded that undue influence was committed with the consent of the respondent (see *Charan lal Sahu v Giani Zail Singh & Anor* [1983] MLB (Ind) 24, para 30). Such matters cannot be assumed to be implied by the fact of the petitioner having referred to *Usul ak Basi* as the respondent's agent, because that appears to be substantially an essential requirement of s 9 of the Election Offences Act 1954. Furthermore, it must not be overlooked the requirement of r 4(1) (b) read with para (3) of the form under r 4(4) of the EPR 1954 of the need to be 'concise' concerning the 'facts' which must necessarily include 'facts... relied on to sustain the prayer'. In other words, once the act complained of is said to have been done by 'any other person' other than the respondent, it must be indicated in the allegation whether that 'other person or persons', which category logically would have to include the respondent's agents, did the said act 'on (the respondent's) behalf' or with the respondent's consent. But this was not done.

[91] Furthermore, as pointed out by the learned counsel for the respondent, presumably due to the ambiguity of the pleading, the undue influence alleged to have been committed under subpara (3)(xiv) does appear to be directed against the campaign workers rather than against any voter. For the aforementioned reasons, in my view that subparagraph would, in any case, have to be struck out.

[92] Subparagraph (3)(xv) of the petition is grounded upon s 32(a) of the Election Offences Act 1954. In *Dr Shafie's* case, concerning general bribery, general treating or general intimidation, it was, inter alia, stated:

> It is imperative for the petitioner to identify the precise class of the offence, namely whether it is general bribery, general treating or general intimidation.... The petitioner must identify in clear and specific terms the relevant charge/charges... The facts which constitutes a corrupt practice must be stated and the facts must be correlated to one of the heads of corrupt practice. It is not sufficient to merely state/allege the general class of the offence without sufficiently particularizing the charge. The gravamen of the charge must be set out with exactitude and precision....

Having stated '(t)hat general bribery, general treating and/or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election...', the petitioner then repeats sub-paras (i) to (xiv) above and the particulars thereof.

[93] It is to be recalled the reliance upon Form 7 of *Atkin's Encyclopedia of Court Forms* by the learned counsel for the petitioner. Concerning the usage of the words 'in that' shown therein, learned counsel told the court it would have been possible for him to adopt such usage. But he maintained that it is not required, and that the crucial element is 'as required by r 4(1)(b) of the Election petition r 1'. With respect, in the context of the instant petition, not only the relevant provisions of the Election Petition Rules 1954 but also the relevant provisions of the Election Offences Act 1954 must be complied with. Also, had the usage of the words 'in that' in the said Form 7 been adopted, perhaps the petitioner could have been steered into making the consequential formulation of each the charges in the petition more concise, and correlated. In the manner each of the charges has been formulated, it does appear tenable the submission of the respondent's counsel, that the allegation here (presumably in the instant case) one charge must have the facts that constitute one charge only... because of pleadings - refer to different classes of persons on the allegation of commission of offences this cannot be submitted as concise facts.

[94] In support, learned counsel quoted from the judgment of Datuk Charles NC Ho J in *Wilfred Nissom v Datuk Stephen Yong & Anor; Mohamad Shamsuddin bin Moktar v Chong Kim Mook & Another Wilfred Nissom v Datuk Stephen Yong & Anor Mohamad Shamsuddin bin Moktar v Chong Kim Mook & Another* (Kuching Election Petition No K 1 & 2 of 1979) in which it was held, inter alia, 'An election enquiry is of quasi-criminal nature in as much as its findings on corrupt practice have penal effects. That being the case, a charge in an election petition alleging corrupt practices ought to contain such particulars as to enable a person accused of such corrupt practices to know what precisely he is accused of so that he may have the opportunity to meet the allegations made against him'. To make his point, the learned counsel refers to charge (3)(1) of the instant petition, line 2 where it is stated, 'personally and/or his agent... ' Counsel says... here the charge is not concise because not clear whether the allegation is against the respondent in person and/or his agent. Further down - the 'Particulars' — line no.2 — it refers to different offences, each date refers to different offence, 20 Mei 2006 or 'before', 'during' could mean everyday during the campaign period and/or after could mean any time after the election.

Still on charge (3)(1), the respondent's counsel pointed out: The charge (3)(1) is further divided into (a), (b) and (c) — this means it amounts to multiple charges over different times, different dates.

[95] I have discussed the reasons why sub-paras (3) (i) to (3) (xiv) ought to be struck out, and as such reliance by the petitioner on those subparagraphs and the particulars thereof would no longer be tenable. In any case, with respect, the submission that the use of 'and/or' is a multiplication of charges which would bring injustice to the respondent would appear tenable, particularly in the context of what was said by VT Singham, J (quoted above) in *Dr Shafie's* case. Furthermore, the use of 'and/or' seems to imply that the petitioner himself is quite unsure which of the three classes of offences allegedly committed and which had affected the result of the election. As it is, the petitioner has not pleaded the preliminary basic facts, and it is left to the respondent to sieve through all the particulars and thereafter correlate them with the petitioner's bare allegation under subpara (3)(xv). In this connection, it would appear tenable the respondent's counsel's view that the petitioner cannot use the particulars to substitute a fresh action or to introduce a new plea by way of particulars other than a proper separate pleadings which show all the material facts precisely and clearly containing all necessary details and particulars as required by law. In the premises, the contention that subpara (3)(xv) 'does not contain a concise statement of material facts...' would appear tenable and would, in any case, have to be struck out also.

[96] As regards subparagraph (3)(xvi) of the petition, it appears tenable the submission to the effect, that what is alleged therein does not solely relate to complaints in relation to the conduct of any election. In support of this, learned counsel refers to *Dr Shafie's* case at p 37hf-h and 377a where it is inter alia stated,... the new provision to s 32(b) of the Election Offences Act 1954 only deals with 'conducts of election' and the allegation of non-compliance of s 10 of the Election Offences Act 1954 will not be such a case. In any case, in the manner that the formulation of the allegation is done, it would appear tenable the respondent's contention that, the respondent has no duty to search for the intendments of the petitioner and to see read all the particulars supplied to other headings to find out what are the real particulars under the charges pleaded at subparas (3)(xv) and (xvi) ... '. For the afore-mentioned reasons, and in line with the reasons I have earlier adumbrated concerning, inter alia, the manner in which the various other charges against the respondent have been formulated, subpara (3)(xvi) must, in any case, be struck out as well.

[97] To revert to the issues relating to what appears to be the main thrust of the respondent's complaint concerning the Petition, it would appear noteworthy, that had the grounds and material facts been formulated substantially in the manner as provided by Form 7 of *Atkin's Encyclopedia of Court Forms* (also referred to by learned counsel for the petitioner) read with r 4(1)(b) and (4) of the EPR 1954, the problematic situation resulting from the manner the petitioner's pleadings was done could have been avoided. That mode of formulation would have portrayed more clearly not only the nexus between the ground or charge and the material facts but also the correlation in terms of both law and logic between them. It may be

convenient for the petitioner to formulate the charge and 'particulars' in the manner he did concerning charges (3)(i) to (xvi). But as has been indicated, his having done so appears to have resulted in serious fragmentation or proliferation of what should otherwise have been a correlated formulation of the grounds and concise facts relied on in order to sustain the prayer or to disclose a cause of action.

[98] The contention of learned counsel for the petitioner appears to be, that the 'Particulars' should be considered as forming part of the facts, where as learned counsel for the respondent seems to be of the opposite view. The argument is rather cyclic.... Learned counsel for the petitioner says ignoring (the facts...under...'particulars'...) is like an ostrich burying its head in the sand and hoping the facts do not exist. With respect, the learned counsel has made a point here ie in so far as the existence of the purported facts albeit stated separately under 'particulars'. The only problem is this: if indeed those facts are intended to be part and parcel of the concise facts and grounds on which the petitioners rely why the need to separately and specifically put them under the heading 'Particulars'? As I have earlier discussed, would not it have portrayed a more wholesome and correlated sub-paragraph (see para (3) under r 4 (4) of the Election Petition Rules 1954), if those purported facts under 'particulars' were to have been incorporated and correlated immediately into the grounds or charge in the manner indicated by Form 7 of *Atkin's Encyclopedia of Court Forms* earlier referred to? For the reasons I have earlier indicated, the answer to this question would have to be in the positive. In this connection, it may noted that the insertion of the phrase and the election of the said *Aden ak Denong @ Gabriel Adit ak Demong* ought therefore, be declared void under Section... of the Election Offences Act 1954, would, at any rate, appear repetitive in the sense that such a prayer must in any case be stated in the concluding paragraph of the form under r 4(4) of the Election Petition Rules 1954, and the statement of facts and grounds properly formulated would have already prima facie indicated the commission of a corrupt practice or illegal practice.

CONCLUSION

[99] In the manner sub-paras (3)(I) to (xvi) have been formulated, the petition has not complied with the strict requirements of the relevant provisions of the Election Offences Act 1954 and the Election Petition Rules 1954 — which requirements in my view encompass substantially, inter alia, the manner of formulation as per Form 7 of *Atkin's Encyclopedia of Court Forms*. Here, in formulating 'the concise facts and grounds on which the petitioners rely', it would appear the petitioner did not adopt the approach whereby all material facts are immediately and directly correlated to the grounds, so as to paint a wholesome picture to enable the respondent to sufficiently meet each of the charges leveled against him. If the manner of formulation of the facts and grounds is such that it raised serious ambiguities due to non-compliance with r 4(1) (b) of the Election Petition Rules 1954, as would appear to be the case as regards the instant petition, then the petition would have to be struck out. While there is merit in the petitioner's 'ostrich burying its head in the sand' — argument, not much force could be derived from such an argument unless a reading of the pleadings including the purported facts, albeit set out separately and

specifically under the heading 'particulars', could portray a correlated statement of the facts and grounds so as to disclose a cause of action.

[100] It was based on the various grounds adumbrated above, that the petition was dismissed with costs to the respondent.

Petition dismissed with costs.

Reported by Loo Lai Mee